



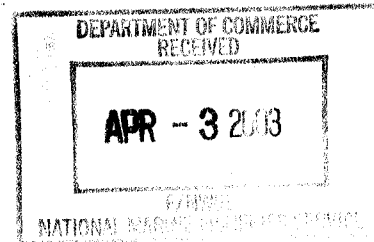
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NATURAL RESOURCES DEFENSE COUNCIL

Via Facsimile (503) 230-5435

March 31, 2003

Donna Darm, Assistant Regional Administrator
Protected Resources Division
National Marine Fisheries Service
525 NE Oregon Street, Suite 500
Portland, OR 97232



Re: Notice of Rulemaking for the Designation of the Eastern North Pacific Southern Resident Stock of Orcas as "Depleted" under the Marine Mammal Protection Act

Dear Chief Darm:

On behalf of the Natural Resources Defense Council (NRDC) and its more than 550,000 members nationwide, we are writing to address the listing of the Southern Resident population of orcas (*Orcinus orca*) as a "depleted stock" under the Marine Mammal Protection Act ("MMPA"). 68 Fed. Reg. 4747 (Jan. 30, 2003). While we view the listing as a necessary step towards conservation of the stock, we believe that it is insufficient to effect, in itself, the recovery of these animals.

There is no argument that the Southern Resident population is well below Maximum Net Productivity Levels ("MNPL"). By its own admission, NMFS has stated that the probable range of the MNPL is between 84-120 individual whales. The most recent Stock Assessment (Draft U.S. Pacific Marine Mammal Stock Assessments 2002) put the number at 79 whales. As this figure is significantly below even the most conservative estimate, the population should be considered "depleted" by any definition of MNPL. But it is important that NMFS, in making this designation, reevaluate its estimates of the population's carrying capacity ("K") and MNPL.

Determining the carrying capacity of marine mammal populations is difficult, and researchers frequently have to rely on historical data to determine this factor. In the case of the Southern Residents, these data suggest that the historical abundance of this population could exceed 1000 individuals. To resolve this important issue, NMFS should conduct DNA work on orca skeletons found in California to see if the population's range once extended to the south; it should assess the possibility of gene flow between the Alaska Resident and British Columbia's Northern Resident populations; and it should also conduct a probability analysis of the population's extinction over time (it being more likely that a population of over 1000 would persist for 10,000 years than would a population of over 200). Furthermore, we believe that for the Southern Residents to have even a minimal chance of recovery, NMFS needs to develop a plan that allows for a MNPL equal to 80% of K, or 150 individuals.¹

¹ Bain, D. E. 2002. A model linking energetic effects of whale watching to killer whale (*Orcinus orca*) population dynamics. Orca Relief Citizens' Alliance Contract Report. 24 pp.

The reduction in numbers that has depleted this population has occurred under the protection afforded it by the MMPA. Designating the population as "depleted" under the Act will help the recovery process by providing it additional protection from subsistence users and ship strikes. However, to allow for a full recovery, the population needs stronger and broader protection.

The main problems affecting this stock of killer whales include (1) biocontaminants, (2) loss of prey availability, and (3) ecosystem degradation. None of these issues can sufficiently be addressed under the MMPA alone. But to the fullest extent possible, NMFS must take this opportunity to create a recovery plan with enforceable actions to protect both the animal and its habitat. Some of the steps that need to be taken include:

- Cleanup of toxic waste sites throughout the Puget Sound and Georgia Basin area
- Prioritizing restoration of regional salmon stocks, which are a primary source of food for the population
- Stricter regulation of whale-watching
- Limiting or mitigating military exercises in the range of the population
- Support of additional research into causes of the decline

The orca is a cultural icon in the Pacific Northwest, and the extinction of this population would be a significant ecological, economic, and cultural loss to the community and the world.

Furthermore, killer whales are a keystone species, and what is happening to them is indicative of what is happening to the food web in the Puget Sound/Georgia Basin area. We are looking to you to take the lead in establishing aggressive measures to save this unique and vital population.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Anker".

Jennifer Anker
Oceans Program